



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 11 2000

James M. Skipper, Jr., Esq.
Ellis Easterlin Peagler
Gatewood & Skipper
P.O. Box 488
Americus, Georgia 31709

Dear Mr. Skipper:

This refers to Act No. 759 (1998), which redistricts the Board of Education of Webster County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your most recent responses to our June 29, 1998, request for additional information on November 12, December 8, and December 15, 1999.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. According to the 1990 Census, black persons represent 50.2 percent of the county's total population and 48.0 percent of its voting age population; according to 1999 registration data, black voters represent 41.2 percent of the registered voters.

The existing plan for the school board contains five single-member districts, three of which have majority black populations (65.6%, 55.7% and 70.1%). The proposed plan reduces the minority population in these districts to 57.3 percent, 52.3 percent and 69.8 percent, respectively. The most significant reductions are in Districts 1 and 3, where the black voter registration percentages have been reduced to 45.6 percent and 42.1 percent, respectively. In jurisdictions where voting is racially polarized, as appears to be the case in Webster County, these

reductions in minority voting strength raise serious doubt whether minorities would continue to have an equal opportunity to elect candidates of choice in either district. You have provided no information indicating that the ability of black voters to elect candidates of their choice would not be diminished under the proposed redistricting plan. Thus, it would seem that the proposed plan occasions a prohibited "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The process of developing a new redistricting plan was initiated after the school district elected a majority black school board for the first time in 1996. We have been advised that black school board members were told that the districts had to be reapportioned and that keeping the existing districts was not an option. However, we have examined each of the reasons asserted by the school district for adopting a new redistricting plan and they appear to be merely pretexts for intentionally decreasing the opportunity of minority voters to participate in the electoral process.

First, the school district maintains that the existing plan adopted in 1993 required revision because the legal description of the districts did not accurately describe the districts as shown on the map of that plan. However, the plan that was submitted and precleared under Section 5 in 1993, and implemented in fact, was the plan as reflected in the map. Thus, the conforming of the legal description to the existing plan required only a technical correction of district descriptions, not a revision of the plan itself.

Under Section 5, the actual boundaries of the districts as delineated on maps accompanying the submission of a redistricting plan are the focus of our determination -- not the legal description of the plan. Consistent with this practice, in our review of the school district's 1993 plan, we treated the boundaries of the districts as described on the submitted maps as determinative. These are also the boundaries we understand the school district to have implemented in subsequent school district elections. In our experience, when discrepancies are discovered between the boundaries submitted by a jurisdiction and precleared under Section 5, and the legal description of the

districts, those discrepancies are resolved by the jurisdiction by conforming the legal description to the boundaries of the districts as shown on the maps of the precleared plan rather than a wholesale revision of the plan.

Second, it was claimed that the proposed plan was adopted to reduce the "malapportionment" in the existing plan. However, the existing plan has an overall deviation of only 5 percent, well within one-person, one-vote standards. The proposed plan increases the overall deviation between districts to 13 percent, a figure which, in the absence of special circumstances, is presumed to exceed permissible constitutional standards. See, e.g., Connor v. Finch, 431 U.S. 407, 418 (1977). Even if the school district was of the belief that districts that would conform to the legal description would be malapportioned and that changes were required, it need only have looked to the existing plan precleared in 1993 to remedy any one-person, one-vote concerns.

Third, it has been suggested that this plan was redrawn to align more closely the election districts of the five-member school board with the three-member board of commissioners. Our review of the current and proposed school board plans indicates that the new plan does not appreciably achieve this result and, in fact, creates some new pockets of population with unique school board/commission district combinations. This justification is also undermined by the fact that the county commission has submitted a new redistricting plan for Section 5 review. When we asked how this change would affect the school board's objective of aligning school board and commissioner districts more closely, we were informed that the school board was unaware of the proposed commission redistricting plan, and that it had no relevance to the school board's proposed plan.

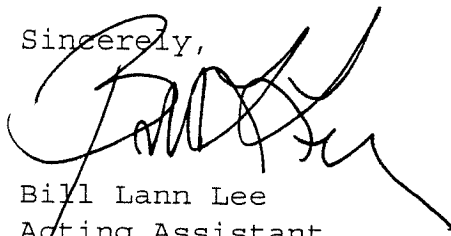
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1998 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

In addition, we understand that at some point between the 1996 and 1998 elections, the term of office of school board members was reduced from six to four years. Our records fail to show that this change affecting voting has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Webster County School District plans to take concerning these matters. If you have any questions, you should call Judybeth Greene, an attorney in the Voting Section, at (202) 616-2350.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", is written over the typed name and title.

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division